

LEGISLATIVE AUDIT DIVISION

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MEMORANDUM

TO: Legislative Audit Committee Members
FROM: Angie Grove, Deputy Legislative Auditor
CC: Jim Lynch, Director, Montana Department of Transportation
Jim Currie, Deputy Director, Montana Department of Transportation
DATE: May 2008
RE: Performance Audit Follow up (08SP-032): Right-of-Way Acquisition Process,
Montana Department of Transportation (orig. 06P-09)
ATTACHMENT: Original Performance Audit Summary

INTRODUCTION

In October 2006 we presented our performance audit of the Right-of-Way Acquisition Process within the Montana Department of Transportation (department). The audit presented seven recommendations to the department. In March 2008, we began gathering information from the department on progress to implement the recommendations. This memo summarizes the results of our follow-up work in addition to presenting background information on the program.

Overview

Audit recommendations focused on improving the department's appraisal and acquisition processes for obtaining right-of-way for road construction projects. The department implemented five of seven recommendations. One recommendation was partially implemented and one recommendation is still being implemented. Implementation of report recommendations appears to have streamlined the right-of-way acquisition process, reduced the number of administrative settlements, and helped the department acquire property in a timelier manner.

BACKGROUND

The Department of Transportation requested a performance audit of its processes for appraising and acquiring right-of-way for road construction projects. The department frequently needs to obtain property as right-of-way for road construction projects. The appraisal process includes determining the fair market value of property based on an appraisal. The acquisition process includes negotiating with landowners for the property acquisition. The negotiation process can include re-evaluating the appraisal based on new information provided by landowners. If the department is unable to come to a mutually satisfactory agreement with landowners to purchase necessary property, it has eminent domain authority, although that option is rarely used.

FOLLOW-UP AUDIT FINDINGS

The performance audit report presented seven recommendations. The seven recommendations addressed strengthening the appraisal and negotiation process and improving internal controls in the acquisition process. The following summarizes information relating to follow-up audit work and the implementation status of each recommendation.

Recommendation #1

We recommend the department improve its appraisal process by involving Right-of-Way Bureau Review Appraisers in developing the scope-of-work for appraisals in all districts.

Implementation Status – Implemented

The department has implemented this recommendation. The department modified its policy and established criteria clarifying when a pre-appraisal scope-of-work is required, both for an entire road project and for selected parcels within a road project. According to department personnel, review appraisers are assisting district right-of-way agents with pre-appraisal scoping work when requested. Typically, pre-appraisal scoping work is conducted in areas with complex property conditions that can affect property values. Department officials indicated these changes have improved the right-of-way acquisition process because it identifies potential problems early in the process and ensures property is acquired more quickly.

Recommendation #2

We recommend the department comply with policy by updating appraisal information prior to making initial offers to property owners to ensure appraisals reflect current market conditions.

Implementation Status – Implemented

The department modified policy to address timeframes for making initial offers to landowners. Appraisals older than three to six months require a new or updated appraisal to ensure purchase offers reflect current market values. Appraisal updates may be necessary sooner depending on market conditions. We obtained documentation verifying aged appraisals were returned to department districts for new or updated appraisals. According to a supervisor in one district, right-of-way operations were modified to assign appraised parcels immediately to a right-of-way agent for acquisition rather than holding parcels until a project's appraisals were all completed.

Recommendation #3

We recommend the Right-of-Way Bureau clarify right-of-way acquisition policies regarding:

- A. Counter offer and response requirements.**
- B. Legal input documentation requirements.**
- C. Acceptable negotiation tactics and timeframes.**

Implementation Status – Implemented

The department modified policy addressing this recommendation. Policy now requires department personnel to make a counter-offer within two weeks of receiving an offer from a landowner. Department policies were also modified to clarify documentation requirements for official files. Policy also addresses acceptable negotiation tactics and timeframes.

Recommendation #4

We recommend the department clarify bureau policy regarding administrative settlement documentation requirements.

Implementation Status – Implemented

Administrative settlements occur when the department agrees to pay a landowner more than what the department determined to be just compensation for a parcel. Administrative settlements are justified as being in the best interests of the state. The department clarified policy stating a justification by the approving authority must be included in the file. Policy also provides examples of reasons justifying administrative settlements, such as being less costly than pursuing the property through eminent domain proceedings.

Recommendation #5

We recommend the department improve its right-of-way data collection by:

- A. Implementing a performance measurement system that includes program objectives and performance measures.**
- B. Collecting management information that is relevant, complete, and accurate to determine if objectives are being met.**

Implementation Status – Partially Implemented

The department redesigned its Oracle management information system to improve data collection. Our review of the Oracle user manual indicates this system will improve the department's capability for tracking parcel information during the appraisal and acquisition processes. According to the user manual, the system has capabilities of exporting reports into Excel format for improved data analysis for management oversight.

The department has not completed development of performance measures. Department officials said performance measure development should be completed by September 2008.

Recommendation #6

We recommend the department identify and implement strategies to improve intra-departmental communications.

Implementation Status – Implemented

The department initiated quarterly supervisor meetings to discuss right-of-way issues and practices. Supervisors from all department districts participate in the meetings. Additionally, the department implemented an annual right-of-way "academy" for bureau personnel to discuss right-of-way proceedings and provide training to right-of-way personnel throughout the state.

During the original audit, we noted lack of a clear chain of authority for approving administrative settlements. Department policy was changed to clarify chain of authority for approving administrative settlements. Follow-up interviews indicate this policy is being followed.

Recommendation #7

We recommend the department:

- A. Modify its quality control system to ensure state-wide consistency and compliance.**
- B. Formally implement the program as an ongoing department oversight function of right-of way acquisition activities.**

Implementation Status – Being Implemented

The department completed drafting its quality control (QC) and quality assurance (QA) policy in November 2007. The department's QC process is conducted at the local level with reviews and checks during the appraisal and acquisition processes. The QA process includes periodic reviews or audits of selected files to verify the QC process is working. Program personnel said they are still developing plans for actually conducting quality assurance reviews. The QA process should also improve intra-departmental communication.